



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/726,953	11/29/2000	Ricardo Guimaraes	155615-0018	1119

7590 09/03/2002

IRELL & MANELLA LLP
Suite 400
840 Newport Center Drive
Newport Beach, CA 92660

EXAMINER

DAHBOUR, FADI H

ART UNIT PAPER NUMBER

3742

DATE MAILED: 09/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/726,953

Applicant(s)

GUIMARAES ET AL.

Examiner

Fadi H. Dahbour

Art Unit

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 November 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 11/6/01 is missing legible copies of the three Foreign Patent Documents, as well as the 24 Non-Patent Literature Documents. Thus, the information disclosure statement fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, at line 1, the term "that can be" should be deleted.

In claim 8, at line 1, the term "that can be" should be deleted.

Corrections are required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3742

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

5. Claims 12-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Kawesch.

Kawesch discloses a method for performing an ophthalmic procedure on a cornea of a patient (Figs.1-5), comprising directing a flow of air across the cornea (200 of Fig.4, also see "over" in line 28 of col.5), creating a flap in the cornea (16 of Fig.2), moving the flap to expose a portion of the cornea (16 of Fig.3), ablating a portion of the exposed cornea with a laser beam (102 of Fig.4), moving the flap back onto the cornea (see "repositioning the flap" in line 45 of col.2), further comprising adjusting a flowrate of the flow of air (206 of Fig.4, also see "flow rate" in line 31 of col.5), further comprising adjusting a direction of the flow of air (206 of Fig.4, also see "manually operated... manipulated to direct...flow of...air over" in lines 26-28 of col.5).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-11, are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawesch in view of Glockler

Kawesch discloses a system used to perform an ophthalmic procedure on a cornea of a patient (Figs.1-5), comprising a light source that can direct a light beam onto the cornea of the patient (102 of Fig.4), and an airflow module (200 of Fig.4) that can direct a flow of air above the cornea of the patient (see "over" in line 28 of col.5), further comprising a control console that is coupled to the airflow module (200 of Fig.4, also see "control" in line 57 of col.3), wherein the light source includes a laser (see "laser" in line 24 of col.4), wherein the airflow module creates a laminar flow of air (200 of Fig.4, also see "over" in line 28 of col.5), wherein the airflow module includes an adjustable blade (206 of Fig.4).

Regarding claims 1, 3-11 Kawesch lacks a patient support table. Glockler discloses a patient support table (Fig.1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the feature taught by Glockler, in the device of Kawesch, because Glockler teaches that "the head of patient P will be firmly supported on, and preferably restrained by an operating table" (see lines 62-63 of col.5 of Glockler).

Regarding claims 2, 8-11 Kawesch lacks a portable stand that supports the airflow module. Glockler discloses a portable stand (see wheels in Fig.1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the feature taught by Glockler, in the device of Kawesch, because it would allow for the device to be used in alternative locations, and also because,

Art Unit: 3742

Kawesch teaches that "drying device 200 may be integrated into a complete laser-based vision surgery apparatus or it may be a separate, retrofit unit" (see lines 17-19 of col.5 of Kawesch).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Shimmick et al ('473), Shimmick et al ('313), Ruiz, Lin, Kritzing et al ('913), Kritzing et al ('285) and Kritzing et al ('700) are cited to show LASIK systems and methods.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fadi H. Dahbour whose telephone number is 703-306-5479.


Teresa Walberg
Supervisory Patent Examiner
Group 3700

August 26, 2002